

Request for Waiver of the Commission's "Build-Out" Deadline

Channel 12 of Beaumont, Inc., Licensee of station KBMT-TV and Permittee of station KBMT-DT, Beaumont, Texas (KBMT-DT) holds a construction permit for facilities consistent with paragraph 78 of the Second DTV Periodic Review Report and Order which will expire on July 26, 2006. An application for extension of construction permit was electronically filed on June 19, 2006.¹ The Commission Public Notice released June 14, 2006 (DA06-1255, page 3) states that

"If a licensee that is subject to the July 1, 2006 interference protection deadline has one of the following by that deadline (in the instant case, the deadline would be July 26, 2006), then it has satisfied the use-it-or-lose-it requirement and need not file a waiver request."

The term "one of the following" includes

"a CP for para. 78 facilities with a pending application for extension of time to construct."

The Public Notice, page 3, also states as follows:

"If such licensee has received approval of its modification application but has not filed an application for license to cover its CP by the July 1 deadline, then it should file a request for waiver of the interference protection deadline if it wants to continue to receive interference protection."

KBMT-DT believes that since it holds a construction permit consistent with paragraph 78 of the Second DTV Review Report and Order and, further, has filed an extension application, it need not file a request for waiver. Nevertheless, and in an abundance of caution, KBMT-DT sets forth the following facts and justifications in support of a waiver request.²

1. KBMT-DT operates on digital channel 50 and KBMT-TV operates on analog channel 12. KBMT-DT has elected to return to channel 12 as its permanent DTV home;
2. KBMT-DT initially was granted Special Temporary Authority ("STA") to operate with reduced facilities (facilities less than those authorized in the construction permit) by Commission letter dated April 5, 2002;

¹ The extension application was reported as "Accepted for Filing" on a Commission Public Notice dated June 22, 2006 (BEPCDT-20060619ABV).

² The licensee does not believe that the second cited quotation is factually applicable.

3. KBMT-DT commenced digital operation with the facilities authorized in the Commission letter of April 5, 2002 on August 14, 2002 and has continued such operation pursuant to STA renewal grants;
4. A modification of construction permit application for DTV channel 50 was granted on January 26, 2006 (BMPCDT-20051202AIQ) which will enable KBMT-DT to achieve compliance with the 80% threshold set forth in paragraph 78 of the Second DTV Periodic Review Report and Order (19 F.C.C. Rcd. 18,279, 18,314 (2004)). Specifically, the modification application proposes relocation of the digital channel 50 transmitter site to the existing analog channel 12 site, a new channel 50 antenna and an increase in the ERP. The aforesaid construction permit expires as of July 26, 2006. An application for Extension of Construction Permit was electronically filed on June 19, 2006;
5. As of the instant date, the channel 12 tower has been modified to accommodate the channel 50 antenna; the new higher-gain channel 50 antenna has been installed; and a new "shared" transmission line has been installed;
6. The increase in ERP will be achieved by a transmitter comprising two separate power amplifier cabinets. One of the two power amplifier cabinets is on hand (the transmitter used for the current channel 50 STA operation). The second power amplifier cabinet is undergoing modification at the manufacturer. While the contract with the manufacturer specifies delivery within 120 to 150 days (September, 2006 or October, 2006), delivery is expected possibly as early as July, 2006;
7. The licensee entity filed on June 19, 2006 (a) a request for extension of the existing STA (which expires on July 1, 2006) and (b) a request for modification of the existing STA. The STA modification request proposes operation consistent with the facilities specified in the outstanding construction permit except as to ERP. The maximum ERP for the modified STA will be 19.5 kW, approximately half of the maximum ERP specified in the outstanding construction permit (35.5 kW). Most significantly, however, the modified STA (without the power amplifier cabinet undergoing modification) will enable KBMT-DT to achieve compliance with the 80% threshold standard;
8. The primary reason for the request to extend the existing STA is that the transmitter housing (in connection with the outstanding Construction Permit) for the DTV transmitter is under construction and will not be completed until early July, 2006. Consequently, DTV operation pursuant to the existing STA will

continue until the transmitter housing is completed and the STA modification request is granted.³

9. The licensee entity was devastated by Hurricane Rita in late September, 2005. Manpower resources were and continue to be directed to returning the stations to an acceptable level of normalcy. While most of the construction contemplated by the outstanding Construction Permit has been completed, clearly the extent of the damage and the use of manpower resources utilized to restore facilities are factors contributing to the necessity of filing requests for an extension of the existing STA and modification of the existing STA. The identification of property damaged and cost estimates are set forth in Appendix A.

In summary, the licensee entity has substantially completed construction of the facilities specified in the outstanding construction permit. Only the DT transmitter housing and the matter of the transmitter ERP output remain uncompleted as of this waiver filing date. With respect to the transmitter housing, it will have been completed prior to the July 26, 2006 construction permit expiration date. As to the transmitter ERP output, station KBMT-DT will be operating with sufficient power to achieve compliance with the 80% threshold standard upon the grant of the STA modification request and the completion of the DT transmitter housing – expectant July, 2006 dates. Upon commencement of service pursuant to the proposed STA modification, the instant waiver request will become moot. Delivery of the second power amplifier (which will bring the station operation into compliance with the outstanding Construction Permit) will occur sometime between July, 2006 and October, 2006. Thereafter, a licensee application will be promptly filed. It is respectfully submitted that in light of the unique circumstances and the relatively short time period required for station KBMT-DT to achieve compliance, a waiver (if, in fact, a waiver is deemed necessary) should be granted.

³ Considering the fact that the proposed STA modification will not extend coverage beyond that specified in the outstanding Construction Permit, the reasonable expectation is that the STA modification request can be expeditiously granted.

APPENDIX A

1. KBMT Hurricane Rita Damage

A. Transmitter Site

1. Tower repainted
2. Tree removal from guy wire
3. 28 Diagonals on Tower bent
4. All guys out of tension tolerance; 1 as much as 30% out of tolerance

5. Damage to Aural P.A.
6. Water Well building destroyed
7. Water Well plumbing destroyed
8. Trees down on $\frac{1}{4}$ mile of Road and had to be removed
9. Road had to be repaired from tree damage
10. Estimate of Damage: \$200,000

B. Studio Building Damage

1. Roof came off
2. Roof top Air Conditioners Damaged
3. Air Conditioning Duct Work Destroyed
4. AP, DG Systems Satellite Dishes Destroyed
5. Off Air, Two Way, and EAS Antennas Destroyed
6. Security Lighting Destroyed
7. Newsroom Destroyed
8. Accounting Destroyed
9. Creative Services Destroyed
10. Engineering Destroyed
11. Engineering Office Destroyed
12. Break Room Destroyed
13. Satellite Center Destroyed
14. Front Lobby Destroyed
15. Phone Room Destroyed
16. Carpet in Sales, Traffic, GM Office Ruined
17. Estimate of Damage: \$450,000

C. Equipment Damage

1. Master Control, Production Control Estimate \$2,100,000
2. Office Equipment, Phone System, Newsroom Computer System: \$214,500